IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6161 OF 1997

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

SANJAY GARMENTS
VERSUS
JHALOD MUNICIPALITY BOROUGH & ORS.

Appearance:
MR RR VAKIL for petitioner
None present for respondents

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 09/05/2000

C.A.V. JUDGMENT

#. Heard the learned counsel for the petitioner.

#. The petitioner in this special civil application is praying for quashing and setting aside the notice dated 3rd July 1995 of the Chief Officer of Jhalod Municipality Borough, cancelling the octroi exemption granted to the petitioner. Second prayer has been made for direction to the respondents to continue octroi exemption as per letter annexure-B, till 23rd October, 1998. Third prayer has been made for direction to the respondents to refund the amount of octroi deposited by petitioner with respondents under protest with effect from July 30, 1995, till now with 18% p.a. interest. Prayer has also been made for grant of interim relief.

#. Under the Notification dated 14.4.94, the existing Gram Panchayat was converted in Municipal Borough. It is case of the petitioner that the Gram Panchayat had granted exemption to the petitioner from payment of octroi till 23rd October, 1998 but on conversion of the same in Municipal Borough, this exemption was discontinued. It is not in dispute that after conversion of Gram Panchayat in Municipal Borough, the petitioner started to make payment of octroi from 1st July 1995. This special civil application has been filed by petitioner in this court on 11th July 1997. Notice was issued to the respondents by this court on 10.11.97 but interim relief has not been granted. On 19th March 1998, this petition was admitted.

#. Grant of exemption from payment of octroi is not a matter of right or course. It is a concession which can be extended and at a later point of time even it can be withdrawn. It is in fact a case where the petitioner is admittedly paying the octroi from 1st July 1995 and has paid the octroi for the period upto date. What he alleges the exemption has been granted by the Gram Panchayat. It is a case where in substance, the petitioner is praying for refund of the amount paid during this period towards octroi. It is a collection of tax and even if it is found by the court that it is illegal, still, the court will not pass any order of refund thereof unless it is satisfied that refund of the same will not result in unlawful enrichment to the petitioner. The petitioner is a garment manufacturer and naturally, while fixing price of its products, one of the component which is to be taken into consideration is octroi which it paid on the raw material. In the special civil application, the petitioner has not come up with the case that he has not passed over this burden of the octroi on the consumers. The petitioner has not given out all the necessary facts and not produced any material to show and establish that this amount of octroi which it

paid has not been passed over by it to the consumers. This aspect of the matter is very relevant and material and the presumption, assumption and conception under which the petitioner proceeded in this matter is not sufficient to make it entitled for refund of octroi amount even in a case where ultimately this court decides in its favour on merits of the matter.

#. There is yet another ground on which this writ petition cannot be entertained. The petitioner started to pay octroi, on its discontinuation of exemption granted earlier from payment of octroi, to the Gram Panchayat from 1st July 1997 and this writ petition has been filed after two years thereof. Delay is another ground on the basis of which this writ petition deserves to be dismissed.

#. The net result of the aforesaid discussion is that leaving apart the merits of the matter even in case where this court decides in favour of the petitioner no order of refund can be made as otherwise, it will result in unjust enrichment to the petitioner. In the result, this special civil application fails and the same is dismissed with costs. Rule discharged. Interim relief, if any, earlier granted stands vacated.

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(sunil)